REMARKS

Applicant thanks Examiner Kimberly Locket for the outstanding Office Action dated November 19, 2004. Applicant respectfully requests reconsideration and allowance of the subject application. New claims 60-75 are added. Accordingly, claims 40-75 are pending.

Claim for Priority

The present application (10/930,279) is a national stage application filed under 35 USC § 371. Applicant requests acknowledgment that the present application has met the requirements of 35 USC § 371 and that the filing date is the international filing date of PCT application PCT/US98/20376, filed on 10/29/1998.

Request For Reconsideration

I. Obvious Type Double Patenting Rejection

Claims 40-53 were rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over all the claims of US Patent 6,563,034 and US Patent 5,986,191. Applicant respectfully traverses these grounds for rejection.

The Examiner has the burden to show that (1) the inventions claimed (2) are not patentably distinct and (3) are based on a prima facie showing of obviousness. This analysis must be based on what the claim defines and not on the claim language itself, as required by the Federal Circuit:

> [I]t is important to bear in mind that comparison can be made only with what invention is *claimed* in the earlier patent, paying careful attention to the rules of claim interpretation to determine what invention a claim *defines* and not looking to the claim language for anything that happens to be mentioned in it as though it were a prior art reference. ... [W]hat is claimed is what is *defined by the claim taken as a whole*, every claim limitation ... being material. *General Foods Corp. V. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 23 USPQ 2d, 1839, 1845 (Fed. Cir. 1992). (emphasis in original.)

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Applicant respectfully submits that the Office Action has not made a prima facie case of judicially-created obviousness-type double patenting because the Examiner did not consider the US Patent 6,563,034 claims as a whole. Instead, the Examiner picked certain elements of the US Patent 6,563,034 claims to combine with US Patent 5,986,191 while ignoring other elements of the US Patent 6,563,034 as if the US Patent 6,563,034 claims were a prior art reference, which is expressly prohibited by the doctrine of non-statutory double patenting. For example, the Examiner ignored the "separate means ...additional contact point for gripping said at least one of said strings" elements in the 6,563,034 claims, which are not present in applicant's claims.

Assuming, arguendo, that we accept the examiner's assertion as to the differences between the instant invention and the art of record. The examiner points to column 2, lines 46-48, of either US Patent 6,563,034 or US Patent 5,986,191 for a disclosure of the "unitary component." The unitary component, however, is not disclosed at the reference point mentioned by the examiner. In fact, the unitary component as claimed is not disclosed in either of the cited patents. The examiner has not made a prima facie case of judicially-created obvious-type double patenting.

Therefore, since the claims of US Patent 6,563,034 has one or more element not found in the present claims, the double patenting rejection should be withdrawn. Alternatively, since the unitary component is not disclosed in either US Patent 6,563,034 or US Patent 5,986,191 the double patenting rejection should be withdrawn.

II. Same Invention Double Patenting Rejection

Claims 54-59 are rejected as being drawn to the same invention as claims 1-12 of US Patent 5,965,831.

In determining whether a statutory basis for a double patenting rejection exists, the question to be asked is: Is the same invention being claimed twice? 35 USC 101 prevents two patents from issuing on the same invention. "Same invention" means identical subject matter. Miller v. Eagle Mfg. Co., 151 U.S. 186 (1984); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Ockert, 245 F.2d 467, 114 USPQ 330 (CCPA 1957). A reliable test for double patenting under 35 USC. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Claims 54-59 of the instant invention recite "one string anchor on opposite side of at least one said second critical point from said first critical point is located a critical distance from said second critical point such that said at least one string is rendered substantially inextensible." The claims of US Patent 5,965,831 do not recite such an element nor is it required to practice the instant invention.

Therefore, since a literally infringed claim in the application does not lead to a literally infringed claim in the patent using the holding of In re Vogel a statutory determination of double patenting cannot be sustained.

Amended Claims

Pending claims 40, 50, 54, 56, 58, 59 are amended to improve the readability of the claims. Pending claims 40-42 46, 50, 54-59 are amended to change means-for-function aspects to apparatus aspects.

New Claims

New claims 60-75 are added. Independent claim 60 includes a tremolo formed from a single bent plate material in which the tremolo has a base plate portion and a spring holder portion. The tremolo is connected directly to counter springs that have a first end and a second end, the first end of each counter spring

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being connected to a body. Claim 60 is in a condition for allowance. Claims 61-63 include further limitations and are also in a condition for allowance.

Independent claim 74 includes at least one string that is rendered substantially inextensible between a second critical point and a string anchor and in a condition for allowance. Claims 75 include further limitations and is also in a condition for allowance.

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Conclusion

All pending claims 40-75 are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the subject application. If any issues remain that prevent issuance of this application, the Examiner is urged to contact the undersigned applicant before issuing a subsequent Action.

Respectfully Submitted,

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